

COMPLIANCE AGREEMENT
between the
SAGINAW VALLEY NAVAL SHIP MUSEUM
and the
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN RE: Transfer of ex-USS EDSON (DD 946) from the U.S.
Department of the Navy to the Saginaw Valley Naval Ship
Museum, Bay City, Michigan

I. PARTIES

The U.S. Environmental Protection Agency and the Saginaw Valley Naval Ship Museum (the "Donee") located in Bay City, Michigan are parties to this Compliance Agreement ("Agreement") regarding the donation by the U.S. Department of the Navy ("Navy") of ex-USS EDSON (DD 946) ("ex-USS EDSON") to the Donee for use as a static museum and memorial.

II. PURPOSE

This Agreement specifies the terms and conditions under which EPA will exercise its enforcement discretion to refrain from instituting an enforcement action against the Donee for violation of the requirements relating to polychlorinated biphenyls ("PCBs") under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and the PCB regulations at 40 C.F.R. Part 761, arising from the Donee's continued use of PCBs and PCB items onboard ex-USS EDSON, and from any distribution in commerce of PCBs and PCB Items, in regulated concentrations, based upon any transfer of title to, or possession of, the vessel between the Navy and Donee. If the Donee complies with each of the terms and conditions of this Agreement, EPA will not institute any such enforcement action against the Donee. Based on the facts presented to EPA and referenced in this Agreement, EPA has determined that this exercise of enforcement discretion will serve the public interest.

III. APPLICABILITY

- A. This Agreement applies to both authorized and unauthorized uses of PCBs and PCB Items onboard ex-USS EDSON. For authorized uses of PCBs and PCB Items, this Agreement includes terms and conditions that are in addition to existing regulatory requirements at 40 C.F.R. Part 761.
- B. This Agreement mandates sampling, maintenance, notice, training, cleanup procedures, and other requirements for PCBs and PCB Items on ex-USS EDSON.
- C. The EPA's enforcement discretion regarding the distribution in commerce of PCBs and PCB Items onboard ex-USS EDSON by the Navy to the Donee is addressed in a separate EPA/Navy agreement. That agreement identifies the steps the Navy will take with

respect to the distribution in commerce of PCBs and PCB Items onboard ex-USS EDSON to the Donee.

- D. This Agreement is not, and shall not be construed as, a release of the Donee from any legal obligations under TSCA or any other environmental laws.

IV. DEFINITIONS

- A. The following definitions apply to this Agreement. If a term is not defined below, it shall have the meaning set forth in Section 3 of TSCA, 15 U.S.C. § 2602, or in 40 C.F.R. Part 761. If a term is not defined in Section 3 of TSCA, or in 40 C.F.R. Part 761, such term shall have its ordinary meaning.

1. "Authorized personnel" means:
 - a. Employees or contractors of the Donee who are responsible for watertight integrity and/or ship safety inspections, minor vessel repairs, vessel project management, city code inspections, vessel architecture and /or engineering, and vessel exhibit and program designing, or
 - b. Persons hired by or on behalf of Donee for the purposes of conducting PCB inspections, sampling, disposal, remediation, mitigation or maintenance activities required by this Agreement, or
 - c. All other persons with appropriate health, safety, environmental and other training that the Donee deems authorized.
2. "Days" means calendar days unless otherwise specified. However, if a document submittal under this Agreement falls due on a weekend or federal holiday, it will be due and deemed timely if submitted on the next business day following the weekend or holiday on which it fell due.
3. "Fillers" means any soft, moldable non-liquid materials used to fill and seal joints and voids.
4. "PCB-contaminated Liquid" means a liquid material containing PCBs at concentrations ≥ 50 ppm but < 500 ppm or where insufficient liquid material is available for analysis.
5. "PCB Article" means any manufactured article, other than a PCB container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. PCB Articles include transformers, capacitors, and any other piece of equipment or other material having or assumed to contain a PCB component.
6. "Non-liquid PCB materials" means any non-liquid materials containing PCBs including, but not limited to, all of the following items which may contain PCBs

and, for the purposes of this Agreement, are assumed to contain PCBs on ex-USS EDSON: caulking; felt and rubber ventilation duct flange gaskets; insulation and other nonmetallic components of electrical cable; fluorescent light ballast starters and potting material; bulkhead and pipe insulation; foam rubber/plastic/fiberglass/cork anti-sweat insulation used on hull surfaces and cold water piping; other rubber products such as pipe hanger rubber blocks, snubbers, bumpers, shock and vibration mounts, pads, spools, hatch gaskets, O-rings, packing, grommets, etc.; adhesive tape and double-backed adhesive tape; dried aluminized paint; and dried oil-based paint.

7. "PCB inventory" means the complete and final listing of suspected liquid-filled PCB items onboard ex-USS EDSON, which was developed based on data provided by the Navy, including a list of removed capacitors and transformers, dated November 10, 2004 (Exhibit 1-A); a list of sampled items and results dated November 19, 2004 (Exhibit 1-B), and a copy of a laboratory report pertaining to the sampling of oils and greases conducted for the U.S. Navy and dated February 5, 2009. (Exhibit 1-C).
8. "Publicly accessible area" means any area onboard the ex-USS EDSON to which the public is allowed access under this Agreement.
9. "Restricted Area" means any area onboard the ex-USS EDSON in which there are protective or access prevention measures employed to prevent the public from accessing the area.
10. "Spill" means residual PCBs left on any surface resulting from any past use, management, processing, storage, transportation or disposal of PCBs or liquid-filled PCB items.
11. "The public" means all natural persons, including but not limited to tourists, press personnel, business visitors, VIPs, museum employees, volunteers, routine cleaning personnel and vendors.
12. "Weather Deck" means any portion of the ex-USS EDSON deck that is open to the sky and exposed to the weather.

V. STATEMENT OF FACTS

- A. Under 10 U.S.C. § 7306, the Navy is authorized to donate vessels to State and local governments and non-profit organizations. Pursuant to this statutory authority, the Navy proposes to donate ex-USS EDSON to the Donee for use as a static museum and memorial.
- B. The ex-USS EDSON was a Forrest Sherman-class destroyer, decommissioned on December 15, 1988. The ex-USS EDSON served as a museum ship at the Intrepid Sea-Air-Space Museum in New York City from June 30, 1989 to June 14, 2004, when it was

towed to the Philadelphia Inactive Ships Maintenance Facility for storage.

- C. The Navy and the Donee intend to enter into the CONTRACT FOR THE DONATION OF THE DESTROYER ex-USS EDSON (DD 946), Contract No. _____ (hereinafter, "Donation Contract") (attached hereto as Exhibit 2), which will be the sole legal document evidencing the transfer of title to ex-USS EDSON from the Navy to the Donee. The contract shall require the Donee to maintain ex-USS EDSON in a condition satisfactory to the Navy, including a requirement to provide and maintain purchased insurance for the ex-USS EDSON, and including the management of ex-USS EDSON in accordance with the requirements established by this Agreement between the Donee and EPA.
- D. The Navy has provided EPA and the Donee with written notification of all items that are known to contain liquid PCBs in regulated concentrations onboard ex-USS EDSON, and their date of removal, dated November 10, 2004, and attached as Exhibit 1-A. The removal of liquid PCB containing items is in accordance with the Navy Policy for Environmental Remediation. This notification is in the form of a final inventory which lists, as applicable, the item, equipment identification number, quantity, cabinet, compartment number, location within the compartment, serial number, and any other "remarks" which describe what the item is, and what is known about its PCB content. No liquid items on-board the ex-USS EDSON are known to contain greater than 50 ppm PCBs.
- E. The Navy sampled and analyzed additional hydraulic fluids and lubricants from other equipment onboard ex-USS EDSON during October 2008. All of the samples collected at that time contained less than 40 mg/kg (ppm) PCBs (see Exhibit 1-C).
- F. In addition to the above-referenced inventory of liquid-filled PCB items onboard ex-USS EDSON, available data show that various solid, i.e., non-liquid, materials, found on Navy ships and in other non-maritime and non-military industrial applications, may contain regulated PCBs. Such materials include: caulking; felt and rubber ventilation duct flange gaskets; insulation and other non-metallic components of electrical cable; fluorescent light ballast starters and potting materials; bulkhead and pipe insulation; foam rubber/plastic/fiberglass/cork anti-sweat insulation used on hull surfaces and cold water piping; other rubber products such as pipe hanger rubber blocks, snubbers, bumpers, shock and vibration mounts, pads, spools, hatch gaskets, O-rings, packing, grommets, etc.; adhesive tape and double-backed adhesive tape; dried aluminized paint; gloss oil-based paint; and oils and greases. Ex-USS EDSON contains some of these materials.
- G. The Navy's 1994 PCB survey of ex-USS EDSON shows that there are some non-liquid PCB materials with PCB concentrations ranging from less than 1 ppm to 5,800 ppm onboard the vessel. The Navy provided a copy of a 2004 laboratory report providing results of PCB analysis of various non-liquid materials on ex-USS EDSON, attached as Exhibit 1-B. Seven non-liquid items are reported in a 2004 report as containing PCBs about the regulatory limit of 50 mg/kg (ppm). This sampling survey does not completely characterize the extent to which PCBs are present in all types of non-liquid materials on

ex-USS EDSON. Consequently, other materials of these types and other types of non-liquid materials may exist on ex-USS EDSON with PCB concentrations that exceed regulated levels.

- H. PCB use, distribution in commerce, and disposal are regulated by the EPA under TSCA, 15 U.S.C. §§ 2601 *et seq.*, and the PCB regulations set forth at 40 C.F.R. Part 761. With limited exceptions, PCBs and PCB items, regardless of concentration, may not be used in any manner other than in a totally enclosed manner within the United States unless otherwise authorized by the EPA under TSCA (40 C.F.R. § 761.20(a)). Some materials onboard ex-USS EDSON exist in a non-totally enclosed manner and their use may not be authorized by EPA.
- I. On June 21, 2010, the ex-USS EDSON was inspected by Michael Smith of Applied EcoSystems Great Lakes, Inc. G-4300 South Saginaw Street, Burton, Michigan, on behalf of the Saginaw Valley Naval Ship Museum. The purpose of the inspection was to review the proposed tour route for potential hazards not previously identified. No new hazards were found. Maps outlining the proposed tour route, and photographs of the tour route are attached in Exhibit 3.

VI. GENERAL REQUIREMENTS

A. Administrative & Overall Requirements

- 1. The Donee shall comply with all PCB regulations and 40 C.F.R. Part 761, except as otherwise provided for in this Agreement.
- 2. EPA shall determine the adequacy and completeness of all submissions required under this Agreement.
- 3. EPA shall determine the compliance of all PCB regulations for the purposes of this Agreement

B. General Document Receipt, Review and Approval

- 1. *General Deliverable Submission Requirements.* Deliverables shall be submitted to EPA within the time periods prescribed in this Agreement.
- 2. *Deliverable & Submission Reporting & Timelines*
 - a. *Plan Submissions where EPA Approval is Required before Action.* Any and all Donee documentation that requires EPA review and approval prior to action, implementation and/or finalization shall be submitted to EPA at least sixty (60) days prior to the desired action, implementation, finalization and/or other necessary approval date.

- b. *Follow-up, Result, Findings and other Accountability Submissions.* Submissions of Agreement-required follow-up, lab result(s), finding(s) or any other required accountability reporting shall be made to EPA within thirty (30) days of completion.
 - c. *Third Party Reporting or Submissions.* Where a third-party completes a submission for the Donee, the third-party shall submit the information within thirty (30) days of completion to both the Donee and EPA.
 - d. *Contamination, Health and Safety, or Hazard Findings.* The Donee shall submit all newly found PCB contamination, health and safety, other hazard findings to EPA within 48 hours of determination.
 - e. *Imminent Hazard Notification.* The Donee shall inform EPA immediately in the event of an imminent environmental or human health hazard posed by the Ex-USS EDSON.
 - f. *Written Notice of Tour Commencement.* Not later than thirty (30) days prior to commencement of the first tour(s) on the ex-USS EDSON, the Donee shall provide EPA with written notice of the date tours are scheduled to begin.
- 3. EPA shall review and respond to any Donee submission required by this agreement within sixty (60) days after receiving the submission, unless the parties agree in writing to alter the time frame for submission and/or response.
 - 4. EPA may extend the deadline for any submission at its sole discretion.
 - 5. EPA shall notify the Donee in writing of EPA's approval or disapproval of each submission required by this agreement. In the event of EPA's disapproval,
 - a. EPA shall specify in writing any deficiencies in the submission.
 - b. Within thirty (30) calendar days of receipt of EPA's comments on the submission, the Donee shall submit to EPA for approval a revised submission, which responds to any comments received and/or corrects any deficiencies identified by EPA.
 - 6. In the event that EPA should continue to disapprove of the revised submission, EPA may require that the Donee prohibit public access until the submission is revised and implemented in accordance with EPA's direction.
 - 7. Any and all EPA approved plans (workplans, SOPs, SAPs, QAPPs or otherwise) must be implemented or acted upon within thirty (30) days of approval.

C. Agreement Compliance & Documentation

1. Compliance with all Agreement requirements shall be documented, and
2. Where any action or series of actions is required, the Donee shall provide EPA with written confirmation that the requirement has been met.

D. Addressees of Notifications, Reports, Correspondence, and Other Communications

All notifications, reports, and correspondence required under this agreement shall be provided to the following individuals as appropriate:

EPA: Chief, Pesticides and Toxics Compliance Section
U.S. EPA Region 5
77 West Jackson Blvd. (LC-8J)
Chicago, Illinois 60604

Donee: Mike Kegley, President
Saginaw Valley Naval Ship Museum
3727 Wilder Road
Bay City, Michigan 48706-2367

VII. HEALTH AND SAFETY REQUIREMENTS

- A. Health and Safety Plan Development. The Donee's health and safety plan, including personal protective equipment requirements, shall be prepared prior to implementing the requirements of this Compliance Agreement.
- B. Health and Safety Plan Documentation. The health and safety plan shall be kept on file at the office of the Saginaw Valley Naval Ship Museum, and be additionally submitted to EPA.
- C. OSHA Notifications. The Donee shall:
 1. Make available to any potentially exposed authorized personnel engaged in repair, remedial, removal or disposal activities information required under the Occupational Safety and Health Administration (OSHA) Hazard Communication Program at 29 C.F.R. Part 1910.1200(h) before disturbing any materials identified as liquid-filled PCB items, non-liquid PCB material, or PCB spills, and
 2. Post a copy of Appendix A at a site that is easily accessible and visible to any potentially exposed individual and/or employee working in an environment where s/he may be exposed to PCBs (e.g., employee workroom, lunchroom, and/or first aid area.)

3. Provide a copy of this agreement to local and county Fire Department-Rescue no later than the date the vessel is conveyed to the Saginaw Valley Naval Ship Museum.

D. Health and Safety Training

1. *Availability.* The Donee shall provide initial and annual training to maintenance workers, tour guides, volunteers, and museum employees regarding the contents of the health and safety plan and regarding PCB items and non-liquid PCB materials found on ex-USS EDSON.
2. *Schedule.* Such training shall be provided through a training session completed prior to the employee beginning work and annually thereafter.
3. A copy of this training shall be provided to EPA thirty (30) days prior to the commencement of training (or within a timeframe mutually agreed to in writing by EPA and the Donee).
4. *Recordkeeping.* The Donee shall retain the names of individuals successfully completing the training and the training dates, and provide this information to EPA upon request.

E. Entry to Site

1. Immediately upon execution of this Compliance Agreement, any person entering the interior of the vessel shall wear, at a minimum:
 - a. Personal protection equipment (PPE) which includes cloth coveralls, gloves, booties, safety glasses, and a hard hat (OSHA Level D), or
 - b. Level B protection shall be worn in any area where PCB-containing oils have been released and/or PCB-containing materials have been damaged, until such time as the PCB Contamination Levels set forth in Paragraph VIII.D below, are achieved for each such area, or
 - c. Level A protection, or any protection higher than Level D protection, shall be worn in any area where it is determined to be required by Site Assessment, Hazard investigation and/or other OSHA or Health and Safety planning requirement(s).
2. PPE requirements may be re-evaluated as the required actions on the installation are completed and the project continues, as approved by EPA.

VIII. ENVIRONMENTAL WORKPLAN AND PROCEDURAL REQUIREMENTS

A. Site Assessment & Hazard Investigation

1. *Initial Site Assessment & Hazard Investigation.* A qualified assessor will inspect the ex-USS EDSON for additional/unknown PCB-containing liquids and other PCB hazards in order to determine if removal of PCB-containing materials is necessary.
2. *Follow-up, Phased and/or Recurrent Site Assessment & Hazard Investigation.* Where necessary or required by EPA or otherwise in workplan execution, a qualified assessor shall inspect the ex-USS EDSON for additional/unknown PCB-containing liquids and other PCB hazards in order to determine if removal of PCB-containing materials is necessary.

B. Project-Level Planning

1. *Initial Document Submission.* Within thirty (30) days after the execution of this Agreement, the Donee shall develop and submit to EPA for approval the following documents related to any and all Donee PCB remediation activities for Weather Deck(s), Publicly Accessible Areas, and any and all other areas that EPA and/or the Donee deem to require additional action(s):
 - a. Any prospective, and applicable or required, project workplans or standard operating procedures (SOPs), and
 - b. Any quality assurance project plan(s) (QAPP(s)), and
 - c. Any sampling and analysis plan(s) (SAP(s))
2. *Workplan and SOP Coverage & Requirements.* For areas where the Donee or their designee elect to complete remedial work or action that will disturb PCBs and/or involve PCB-contaminated material collection, handling, storage and disposal, the Donee shall ensure that respective workplans and/or SOPs be available and address any and all PCB activities as required by this Agreement.
3. *QAPP Coverage & Requirements*
 - a. *Usage.* The Donee shall ensure that, for any PCB activities that involve primary, secondary or historical data aggregation, collection, use or analysis, a QAPP is available and fully utilized by the Donee for that work.
 - b. *Applicability, Coming-into-Force and Expiration.* Donee's QAPP(s) may cover the entirety of the Donee projects or be sequential. However, Donee shall ensure that QAPP applicability times are addressed clearly.

- c. ***QAPP Content Requirements.*** The QAPP shall be informed by:
- i. Project data needs for EPA and the Donee, and
 - ii. EPA Policy and Guidance documents:
 - (1) *EPA Quality Manual for Environmental Programs; May 2000, EPA CIO 2105-P-01-0, Chapter 5, which defines QAPP specifications for EPA Organizations, and*
 - (2) *Guidance for Quality Assurance Project Plans (EPA QA/G-5); December 2002, EPA/240/R-02/009, which provides guidance on developing QAPPs that meet EPA specifications for new and existing data, and*
 - (3) *Guidance on Quality Assurance Project Plans for Secondary Research Data; July 1999, which provides example QAPP specifications for secondary research data.*

OR

- iii. To address concurrent EPA and Navy concerns, EPA/DOD/DOE Uniform Federal Policy for QAPPs, pursuant to the National Technology Transfer and Advance Act (NTTAA), OMB Circular A-119 and EPA OSWER Directive 9272.0-17, including:
 - (1) *Uniform Federal Policy for Implementing Environmental Quality Systems (UFP-QS), and*
 - (2) *The Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP)*

4. ***SAP Coverage & Requirements***

- a. ***Usage.*** The Donee shall ensure that, for any PCB activities that involve PCB sampling and analysis, a SAP is available and fully utilized by the Donee for that work.
- b. ***Applicability, Coming-into-Force and Expiration.*** Donee's SAP(s), like their QAPP(s) may cover the entirety of the Donee projects or be piecemeal. However, Donee shall ensure that SAP applicability times are addressed concurrently with their respective QAPP, and correspond with their respective QAPP.

- c. *SAP Content Requirements.* The SAP shall be informed by:
- i. The Sampling and Analysis needs of EPA and the Donee, and
 - ii. EPA regulatory requirements for PCB sampling, set forth at 40 C.F.R. Part 761 and any other respective EPA regulatory requirement, and
 - iii. EPA PCB Policy and Guidance documents:
 - (1) *Policy for PCB Site Revitalization Guidance under TSCA* (2005); and
 - (2) *Verification of PCB Spill Cleanup by Sampling and Analysis*; August 1985, EPA-560/5-85-026, and
 - (3) *Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup*; May 1986, EPA-560/5-86-017, and
 - (4) *Wipe Sampling and Double Wash/Rinse Cleanup as recommended by EPA*; April 1991, and
 - (5) *Guidance on Choosing a Sampling Design for Environmental Data Collection (OA/G-5S)*; December 2002, EPA/240/R-02/005, which provides guidance on applying standard statistical sampling designs (such as simple random sampling) and more advanced sampling designs (such as ranked set sampling, adaptive cluster sampling) to environmental applications.

- d. *SAP Coverage.* The SAP(s) shall:
- i. Identify any and all sampling and analysis locations, with a focus on locations that have a high potential for public contact, such as handrails, gunwales, gun turrets, bulkheads, etc., and
 - ii. Specify the collection of a sufficient number of surface wipe samples to be representative of each type of high contact surface, and
 - iii. Address any and all outstanding sampling and analysis concerns

5. *Other Required Project-Planning Documentation.* The Donee shall provide any other planning documentation, as needed, for approval thirty (30) days prior to implementation.

C. Sampling and Analysis

1. **Implementation.** The Donee shall execute each EPA approved QAPP, SAP, and/or workplan required in Paragraphs VI.B and VIII.B.
2. **Findings of Potential PCB Contamination.** Any oil or grease stains discovered on any surface area(s) shall be sampled for PCB contamination pursuant to Paragraph VIII.C.3.
3. **General Sampling Practices.** The Donee shall generally conform to the following sampling and analysis practices during QAPP and SAP implementation:
 - a. **Procedures.** Conduct all sample preservation, chain-of-custody record-keeping, and quality assurance/quality control ("QA/QC") procedures utilized for remediation of PCB spills and clean-ups and for air monitoring in accordance with Paragraph VIII.B and the Donee's QAPP, SAP and any other approved plan.
 - b. **Wipe Tests.** The Donee shall use the standard wipe test as defined in 40 C.F.R. § 761.123 for surface wipe sampling and the annual wipe monitoring.
 - c. **Extraction & Analysis.** Extract and analyze sampling media in accordance with Extraction Method 3540C and Analytical Method 8082 in "SW-846, Test Methods for Evaluating Solid Waste."
 - d. **Air Sampling.** The Donee shall:
 - i. Submit its written plan and procedures for performing the air sampling and analysis required by this paragraph for review and approval by EPA in accordance with Paragraphs VI.B and VIII.B.
 - ii. Sample and analyze for total PCBs the air from locations representative of any proposed publicly accessible area in accordance with EPA Method TO-4A, or EPA Method TO-10A to achieve a limit of quantification for PCBs of 0.1 microgram per cubic meter ($0.1 \mu\text{g}/\text{m}^3$) or less., and
 - iii. When collecting the air samples for analysis, the Donee shall sample the indoor air at each location for no fewer than eight (8) continuous hours, and
 - iv. Conduct air monitoring and sample analyses in accordance with any methodologies which EPA may specify in the future to ensure that the measurement of airborne PCBs is scientifically accurate

and sensitive enough to quantify PCBs accurately at 0.1 microgram per cubic meter, and

- v. Perform background air sampling and baseline interior air sampling in any proposed publicly accessible area. If the Donee intends to use the air handling systems, they must be on and operational during the baseline interior air sampling.
 - e. *Additional Sampling Requirements.* The Donee agrees to conduct any additional sampling that EPA may determine necessary within time frames established by EPA after consultation with the Donee.
4. *Sampling Results.* The Donee shall provide EPA with the following:
- a. Sampling results for each area no later than twenty-one (21) days after the samples are taken (or within a time frame mutually agreed to in writing by EPA and the Donee), and
 - b. Concurrently, with the submittal of the sampling results, the Donee shall submit to EPA a deck plan showing the areas and sampling locations and highlighting those areas exceeding the PCB levels pursuant to Paragraph VI.B.

D. PCB Contamination/Action Levels

1. *General Contamination/Action Levels.* Except as provided for the ship's weather decks in Paragraph VIII.D.2, the PCB contamination level criteria are as follows:
- a. Any surface sampled and verified to have less than 10 $\mu\text{g}/100\text{ cm}^2$ PCBs on surfaces requires no remediation.
 - b. Any surface area, except the surfaces of caulk and other fillers which shall be removed and disposed of as set forth in Paragraph IX.A, with PCB levels greater than or equal to 10 $\mu\text{g}/100\text{ cm}^2$ but less than or equal to 100 $\mu\text{g}/100\text{ cm}^2$ must be encapsulated.
 - c. Any surface area, except the surfaces of caulk and other fillers which shall be removed and disposed of as set forth in Paragraph IX.A, with PCB levels greater than 100 $\mu\text{g}/100\text{ cm}^2$ must be cleaned to less than or equal to 100 $\mu\text{g}/100\text{ cm}^2$ and then the area must be encapsulated.
 - d. Air inside the vessel shall not exceed a level determined in conjunction with the Michigan Occupational Safety and Health Administration, as a time-weighted average concentration for up to a 10-hour day and 40-hour week.

- e. Any PCB non-liquid materials, caulk and other fillers with surface levels of PCBs greater than or equal to $10 \mu\text{g}/100 \text{ cm}^2$ must be removed and disposed of in accordance with 40 C.F.R. Part 761.62 and Paragraph IX.A.
 - f. Encapsulation shall at no time be used as a method to remediate PCB non liquid materials or other fillers.
2. *Weather Deck-specific Contamination/Action Levels*
- a. The Donee may permit public access to weather deck tour routes while the results of the sampling required under this subparagraph are pending.
 - b. If the sampling results indicate the presence of PCBs at levels of greater than or equal to $10 \mu\text{g}/100 \text{ cm}^2$ on any surface, the Donee shall immediately inform EPA and discontinue public access to the contaminated area(s).
 - c. The Donee shall decontaminate such surfaces as described in Paragraph IX.B.6, below. Sampling, analysis, reporting, and decontamination activities shall be performed by the Donee or under the Donee's direction to ensure compliance with Paragraphs VI.B, VIII.B and IX.B.6.

IX. DISPOSAL AND RISK MANAGEMENT REQUIREMENTS

A. Removal & Disposal of PCBs

- 1. *General Storage Requirements.* The Donee shall ensure compliance with the storage procedures specified in 40 C.F.R. § 761.65 for PCB waste.
- 2. *General Disposal Requirements.* The Donee shall ensure compliance with the disposal procedures specified in 40 C.F.R. Part 761, Subpart D.
- 3. **Disposal of Liquid-Filled PCB Items:**
 - a. *Submissions.* The Navy has provided written notification, including copies of manifests and certificates of disposal, to EPA certifying that the liquid-filled PCB items found on ex-USS EDSON and those listed on the PCB inventory have been removed and disposed of in accordance with the PCB disposal regulations.
 - b. *Additional Findings.* If additional liquid-filled PCB items are found, the Donee shall:
 - i. Notify EPA of their discovery within three (3) business days of such discovery, and

- ii. Dispose of them in accordance with the PCB disposal regulations.
 - c. *Inability to Dispose.* If the Donee is unable to remove liquid-filled PCB items found on ex-USS EDSON or listed on the PCB inventory due to their locations on the vessel or if the structural or historical integrity of the vessel would be jeopardized by their removal, the Donee shall follow Risk Management procedures set forth in Paragraph IX.B.
 - 4. *Disposal of Readily Accessible Items.* Items and materials, such as rubber and felt gaskets at ventilation duct junctions which are disassembled during the course of maintenance, repair, or remediation work shall be disposed of in accordance with 40 C.F.R. §§ 761.60 or 761.62 and Paragraph IX.A.
 - 5. *Disposal of Removed Non-liquid PCB Materials.* Removed Non-liquid Materials (e.g., caulk) at PCB concentrations of greater than or equal to 50 ppm shall be disposed of in accordance with the PCB regulations at 40 C.F.R. Part 761 and Paragraph IX.A.
 - 6. *Ballast Removal*
 - a. *Required Activities.* Where applicable and potential PCB exposures pose a concern, the Donee shall remove and dispose of all PCB ballasts from fluorescent lights in all publicly accessible areas, unless removal would be detrimental to historical preservation of the ex-USS EDSON, pursuant to 40 C.F.R. §§ 761.60 or 761.62 and Paragraph IX.A.
 - b. *Inability to Remove.* The Donee shall submit for EPA review and approval any information which demonstrates that any fluorescent light ballast that is not removed does not contain detectable concentrations of PCBs pursuant to Paragraph VIII.C.
- B. Risk Management of PCBs in Place
- 1. *General.* The public shall be protected from exposure to non-liquid PCBs maintained in existing applications through implementation of the requirements specified in 40 C.F.R. Part 761 and Paragraph IX.B.
 - 2. *Determinations.* The determination of whether a non-liquid porous material is regulated for disposal must be based on laboratory analyses of representative bulk samples of the material rather than on analyses of surface wipe samples collected and analyzed pursuant to Paragraph VIII.C.
 - 3. *Non-Liquid PCB Materials.* With the exception of caulk and other fillers which shall be removed and disposed of as set forth in Paragraph IX.A, the Donee shall maintain, intact and in place in their existing application, the PCBs described as

non-liquid PCB materials, unless normal maintenance or renovation requires their removal.

4. ***Management of Liquid-filled PCB Capacitors in Gun Mounts.*** The PCB Inventory indicates the following PCB-containing liquids remaining on the ex-USS EDSON:

- Aft Engine Room - Grease from manifold (4.6 ppm)
- Forward Engine Room - Grease from auxiliary steam valve (4.6 ppm)
- Anchor Windlass - Grease from braking system (6.1 ppm)
- Gun Mount Carrier Room (23a) - Grease from gun mount (21.3 ppm)
- Gun Mount Carrier Room (22a) - Grease from gun mount (13 ppm)

These materials shall remain onboard ex-USS EDSON unless the equipment is removed or disassembled for repair, at which time the liquids must be removed by the Donee and disposed of in accordance with 40 C.F.R. Part 761 and Paragraph IX.A.

5. ***Encapsulation Requirements***

a. ***Procedures.*** Prior to any encapsulation (painting), the Donee shall:

- i. Notify painters of the likely presence of PCBs and advise them of procedures to minimize exposure, and
- ii. The Donee shall require painters to use appropriate protective measures such as protective clothing, eye protection and respirators, as specified by EPA, if painters or other personnel engage in scraping or sanding of this material.

b. ***Activity Definition.*** Encapsulation shall involve:

- i. Two (2) coats of an effective coating that will be applied to cover the exposed surfaces extending six (6) inches beyond the area of contamination:
- ii. The two (2) aforementioned coatings must be insoluble in hexane:
- iii. The first (primary) coat and second (secondary) coat shall be of different colors to ensure proper encapsulation and clear evidence of wear:
- iv. The primary coat of encapsulant shall be a yellow color that is similar in shade to the PCB warning labels unless there is already a yellow color adjoining the encapsulation, in which case the first coat of encapsulant shall be red: and

- v. The secondary coat shall be any color contrasting with yellow, or contrasting with red, if that color is applied as the first coat.
 - c. *Notification.* Upon completion of encapsulation requirements, the Donee shall notify EPA in writing within thirty (30) days of completion.
 - d. *Documentation.* Locations of all encapsulated areas shall be documented and noted on a deck plan and this documentation shall be submitted to EPA.
 - e. *Waste Management.* Any dust generated during scraping or sanding shall be carefully removed from the area as soon as possible and before the public has access to that area, and disposed of in accordance with applicable regulatory requirements and Paragraph IX.A.
6. *Decontamination.* All PCB contaminated material requiring decontamination shall be decontaminated pursuant to 40 C.F.R. § 761.79.
7. *Preventing Public Access.*
- a. *Activity Description.* The Donee shall take measures to prevent public access to all areas which do not meet the requirements of Paragraph VIII.D, and are not publicly accessible areas under this Agreement.
 - b. *Maintaining Access Prevention.* Those areas shall be secured against access by the public by locking hatch doors or posting signs and chaining or barring entranceways to prohibit public access
8. *Other Risk Management Actions for Found Items.* Upon discovery of a PCB item or article, the Donee shall consult with EPA, who, in consultation with the Navy, shall determine whether the PCB item shall be removed or an alternative risk management strategy should be engaged.

X. INSPECTIONS, MAINTENANCE AND OPERATIONS

A. Inspections and Maintenance

- 1. *Notice of Maintenance to Be Performed.* Pursuant to Paragraph VI.B, the Donee shall provide notice to EPA prior to performing maintenance on or removal of non-liquid PCB materials, and the removal of PCB items.
- 2. *Public Access During Remedial Action Maintenance.* Except as provided in Paragraph VIII.D.2, the Donee shall not permit the public to board the vessel until EPA has approved the schedule and the Donee has begun to implement it.

3. *General Schedule Submission.* Pursuant to Paragraph VI.B, the Donee shall submit to EPA for approval a regular/routine maintenance schedule and maintenance procedures for publicly accessible areas.
4. *General Schedule Incorporation.* The approved maintenance schedule shall become a part of the Agreement by reference and/or attachment.
5. *General Schedule Inclusions.* This schedule shall include the provision that the Donee's maintenance staff shall conduct regular monthly inspections to determine whether any encapsulant has worn through or become dissociated from the non-liquid PCB materials.
6. *Inspection and Maintenance Implementation.* After EPA approval of the maintenance schedule, the Donee shall implement the approved schedule.
7. *Accounting for Inspection and Maintenance Results.* The written results of these inspections and any maintenance required as a result of these inspections shall be compiled by the Donee and sent to EPA annually, by January 31 of the following year. This report shall include:
 - a. The date of discovery of either a primary coat and/or secondary coat becoming dissociated from the non-liquid PCBs, and
 - b. The date the reapplication of the coating(s) was accomplished, and
 - c. Written results of maintenance procedures performed in publicly accessible areas shall include a listing of any PCB items or non-liquid PCB materials removed from their present locations once the area is open to the public.
8. *Non-Liquid PCB Encapsulation Maintenance.* If vessel repairs, damage, alteration, maintenance, conversion, or the similar activities result in the opening or disturbing of non-liquid PCB encapsulated areas, or the regular inspections indicate wearing of the primary or secondary coats of the encapsulant, the following actions shall be taken by the Donee, provided that the method selected remains fully effective in preventing human and environmental exposure from PCB releases during the vessel's lifetime:
 - a. If any portion of both the primary and secondary encapsulation coat becomes dissociated from the non-liquid PCB material, the primary and secondary coat shall be reapplied within forty-eight (48) hours of the discovery of the dissociation from the non-liquid PCB material.
 - b. In the event that only the secondary coat wears away or becomes dissociated (e.g. chips off) from the primary coat, the secondary coat shall

be reapplied within three (3) days of the discovery of the secondary coat's dissociation from the primary coat.

- c. Depending on the amount of time for wear through of the secondary or primary coat, EPA may require application of additional coats of paint, usage of a more effective paint covering or the construction of a more durable protective cover over the wear area.

9. *Maintenance and Removal of Ventilation Ducts Containing Felt Flange Gaskets*

- a. Shall be accomplished by personnel wearing appropriate protective clothing and equipment who are trained in maintenance procedures applicable to these materials. Maintenance and removal of wire cables shall also be accomplished by trained individuals in appropriate protective clothing. Maintenance procedures shall include descriptions of potentially contaminated felt flanges, cleaning methods, and disposal requirements;
- b. When accomplished by cleaning ducts with brushes or portable duct cleaning machines, shall require disposal of resultant dirt or debris in accordance with PCB disposal requirements at 40 C.F.R. § 761.60 and described in Paragraph IX.A, unless tested and found not to contain PCBs in concentrations greater than or equal to 50 ppm. Brushes and vent duct cleaning equipment contaminated at concentrations greater than or equal to 50 ppm PCB shall either: (1) be disposed of in accordance with 40 C.F.R. § 761.60, or (2) be decontaminated in accordance with 40 C.F.R. § 761.79 and Paragraph IX.B.6;
- c. Shall require removal and disposal of rubber and felt gaskets from opened flanges in accordance with Paragraph IX.A.

B. *Monitoring Requirements*

1. *Annual Air Monitoring*

- a. *Requirements.* The Donee shall:
 - i. Monitor the interior air in the publicly accessible areas of the vessel for PCBs annually as required in Paragraph VIII.C, above,

OR
 - ii. As otherwise required by EPA after baseline air sampling results are reviewed.

- b. **Reports.** The Donee shall provide all PCB concentration air monitoring reports to EPA in writing no later than thirty (30) days following its receipt of the reports.
- c. **Action Levels.** If monitoring results show that the concentration of airborne PCBs exceeds the level required by Paragraph VIII.D, above, the Donee shall:
 - i. Immediately suspend public access to the affected areas, and
 - ii. Turn off the air handling system in the affected areas, and
 - iii. Inform EPA in writing within forty-eight (48) hours of such discovery.
- d. **Followup Actions for Areas Requiring Action.** The affected areas shall
 - i. Be thoroughly ventilated with the outside air,
 - ii. The air handling system shall be cleaned, and
 - iii. Monitoring shall be re-initiated with the air handling system operating after hours, while tours are not being conducted.
- e. **Monitoring for Areas Requiring Action.** Monitoring shall continue until:
 - i. The PCB concentrations no longer exceed the level required by Paragraph VIII.D, above, and
 - ii. EPA determines that the affected area may be open again for public access.
- f. **Post-Monitoring PCB Risk Management Actions.** To reduce airborne levels of PCBs, EPA may require
 - i. The removal of non-liquid PCB materials that are external to the air handling system, and
 - ii. Removal of the rubber or wool felt gasket material in the air handling system serving the area.

2. **Annual Wipe Monitoring**

- a. **Requirements:**

- i. **Plan.** Pursuant to Paragraph VI.B, the Donee shall submit to EPA, for approval, a plan for subsequent annual wipe sampling of each encapsulated area.
- ii. **Reporting.** Pursuant to Paragraph VI.B, the Donee shall provide all annual wipe monitoring reports to EPA.
- iii. **Surface Action Levels.** If, during the annual wipe monitoring, the Donee discovers that the PCB level in any encapsulated area is greater than or equal to $10\text{ }\mu\text{g PCB}/100\text{ cm}^2$ on surfaces, the Donee must:
 - (1) Immediately suspend public access to that area, and
 - (2) Pursuant to Paragraph VI.B, shall inform EPA within forty-eight (48) hours of such discovery.
- iv. **Surface Remediation Actions.** The plan shall require that any encapsulated area where samples contain greater than or equal to $10\text{ }\mu\text{g PCB}/100\text{ cm}^2$ be remediated and encapsulated with an additional two coats of encapsulant pursuant to Paragraphs IX.B and X.A.
- v. **Resumption of Public Access.** Public access may be resumed only after EPA determines, based upon resampling conducted by the Donee, that the PCBs are within the levels specified in Paragraph VIII.C.
- vi. **Continued Results above Action Level.** If after the third application of encapsulation, the annual wipe monitoring reveals a concentration greater than or equal to $10\text{ }\mu\text{g PCB}/100\text{ cm}^2$, the Donee shall immediately suspend public access to such area and shall inform EPA, pursuant to Paragraph VI.B.
- vii. **Continued Remedial Action Needs.** Where PCB contamination remains unresolved after action items, the Donee shall:
 - (1) Submit a plan for EPA approval which either requires the removal of liquid PCB containing materials, or
 - (2) Complete encapsulation of the non-liquid PCB material, or
 - (3) Prohibit public access to each such area.
- viii. **Resumption of Public Access.** Public access may be resumed only after EPA determines, based upon resampling conducted by the

Donee, that the PCBs are within the levels specified in Paragraph VIII.C.

3. *Post-Repair Air Monitoring.* If there are repairs to the air handling system during which PCB gaskets or the encapsulating materials over the gasket material are disturbed (including removal of either gasket material or the encapsulating material) the monitoring frequency shall increase to quarterly, and the Donee shall:
 - a. Provide all post-repair PCB concentration air monitoring reports to EPA pursuant to Paragraph VI.B.
 - b. Resume monitoring on an annual basis when the air sampling results from two (2) consecutive quarters demonstrate that PCB concentrations do not exceed the level required by Paragraph VIII.C.

XI. ALTERATIONS OF TECHNICAL REQUIREMENTS

- A. EPA may alter specific technical requirements in this Agreement in writing based on a written request from the Donee, at the sole discretion of EPA.
- B. Any alteration described in Paragraph XI.A shall become part of this Agreement and subject to all of the requirements herein.

XII. PRESENCE OF OTHER ENVIRONMENTAL CONTAMINANTS ON EX-USS EDSON

The Donee acknowledges that ex-USS EDSON contains substances in addition to PCBs which may be regulated under state and/or federal environmental laws and regulations. These substances may include but are not limited to asbestos, lead, and sodium chromate. These substances are not addressed in this Agreement. The Donee acknowledges its responsibility to comply with all applicable environmental laws and regulations concerning these substances as well as any others which are on ex-USS EDSON.

XIII. FINANCIAL ASSURANCE

- A. **Funding.** It is the expectation of the parties to this Agreement that all obligations established pursuant to this Agreement shall be:
 1. Fully funded, and
 2. Completed with best efforts to obtain timely funding to meet its obligations under this Agreement.
- B. **Donee Acknowledgments.** The Donee acknowledges that regardless of the money budgeted to meet the requirements of this Agreement, the Donee is responsible for compliance with the terms of this Agreement as well as all other environmental

requirements and the management and disposal of any other environmental contaminants aboard the vessel that may be governed by regulations promulgated under TSCA, the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA) or other applicable federal or state statutes or regulations which are not addressed in this Agreement.

C. **Specific Financial Assurance Requirements.** The Donee shall use its best efforts to maintain adequate funding to cover the following items:

1. Maintenance of equipment in authorized uses (transformers, capacitors, hydraulic equipment, heat transfer equipment, electromagnets, switches, voltage regulators, circuit breakers, reclosers and liquid filled cable) and unauthorized uses (paints, caulks, wire insulation, gaskets in air circulation system ductwork, etc.);
2. Disposal of PCBs released and cleaned up by routine janitorial activities or a comprehensive spill cleanup;
3. Disposal of equipment in authorized use at the time of this Agreement, but at some later time designated for disposal; and
4. Injury and/or replacement of personal property in the event of a PCB related incident such as fire or spill.

D. **Assurances.** The Donee assures EPA that:

1. \$ 1.5 million in capital improvement program funds are available to develop ex-USS EDSON into a museum, and
2. Approximately \$20,000 per annum in operating funds are available to perform the maintenance and operating procedures required under this Agreement, and
3. Of this total amount, the Donee has budgeted the sum of \$59,000 to perform the sampling, studies, surveys, assessments, and remediation as necessary to enter into this Agreement, comply with the terms hereof and the requirements of TSCA and other environmental statutes.

XIV. GENERAL PROVISIONS

- A. The Donee shall maintain ex-USS EDSON in a condition satisfactory to the Navy. The Donee shall allow the Navy access to ex-USS EDSON and shall not interfere with the Navy in the exercise of the Navy's obligations to EPA under its compliance agreement with EPA. Further, the Donee shall obtain prior approval from the Navy before disposing of all or any part of ex-USS EDSON and before transferring or assigning any Donee interest in the vessel to any other entity. The Donee shall notify the EPA at least sixty (60) days prior to becoming obligated under any plan or agreement to dispose of ex-USS EDSON or to transfer or assign any interest in the vessel to another entity.

- B. The Donee shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants retained after the effective date of this Agreement to conduct or monitor any portion of the work to be performed pursuant to this Agreement before such work is commenced. As to existing contracts, the Donee shall provide a copy of this Agreement to existing contractors within thirty (30) days of the effective date of this Agreement and at least seven (7) days prior to any contract personnel performing PCB maintenance, clean up or disposal activities as specified in this Agreement.
- C. Modifications to this Agreement may be requested by EPA or the Donee. Except as otherwise provided herein, all such modifications shall be by mutual agreement of EPA and the Donee. All modifications requiring mutual agreement of EPA and the Donee shall be ineffective unless in writing and shall be effective as of the date the last party affixes its signature. If the laws or regulations relating to the matters covered in this Agreement change, both parties reserve the right to request modification of this Agreement to reflect such changes. Failure to agree upon such changes may result in termination of this Agreement by EPA.
- D. The Donee agrees not to modify the Donation Contract in any manner that may affect any future obligation of the Navy and the Donee to manage PCBs or other environmental contaminants onboard ex-USS EDSON in accordance with the terms and conditions of this Agreement or with applicable environmental laws and regulations. The Donee shall provide EPA written notification of any plan to modify the Donation Contract at least sixty (60) days prior to executing any such modification.
- E. The Donee shall notify EPA and the Navy if the Donee determines that it is no longer able or willing to maintain ex-USS EDSON as a museum or memorial within three (3) business days of making such determination. Within ninety (90) days of the Navy's receipt of notice from the Donee that it is no longer able or willing to maintain ex-USS EDSON, the Donee shall, upon receipt of direction from the Navy, transfer title to and possession of ex-USS EDSON to a third party pursuant to Section 2(l) of the Donation Contract or forfeit title to and possession of ex-USS EDSON to the Navy, provided that the Donee shall not transfer ex-USS EDSON to a transferee other than the Navy unless such transferee has demonstrated its capability, and has entered into an agreement with EPA that obligates the transferee, to perform and fulfill all of the Donee's obligations set forth herein as well as any obligations which EPA determines are, as a result of any material change in circumstances arising from such transfer and subsequent use by the transferee, necessary to protect human health, welfare, and the environment from PCBs onboard the vessel. EPA shall apply reasonable criteria in its evaluation of the aforementioned capability of any prospective transferee.

XV. INSPECTION

The Donee hereby agrees to allow federal, state, or local inspectors, including EPA, whose inspection would relate in any way to health, safety or environmental conditions, to board ex-USS EDSON at any time and view any and all portions of the vessel, including any records or

documents, and take any samples they deem appropriate. The Donee also agrees to furnish all documents relating in any way to health, safety, or environmental conditions on, or potentially caused by materials from, ex-USS EDSON to federal or state inspectors upon request.

XVI. PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

Notwithstanding anything to the contrary in the Donation Contract, if EPA determines that the PCBs on ex-USS EDSON may present an unreasonable risk to human health or the environment, then upon receipt of and in accordance with direction by EPA, the Donee shall:

- A. Immediately take all necessary measures to ensure that all hazards onboard the vessel are managed or disposed of according to the applicable law and/or regulation, and/or
- B. Immediately, upon receipt of a request by the Navy, 1) cooperate with the Navy to allow the Navy to take all necessary actions to ensure that all PCBs onboard are managed or disposed of pursuant to 40 C.F.R. Part 761, and/or 2) forfeit title to and possession of ex-USS EDSON to the Navy.

XVII. RESERVATION OF RIGHTS

EPA reserves the right to undertake itself or commence action against any person, including the Donee, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment.

XVIII. ENFORCEMENT

- A. In the event of a breach or suspected breach by the Donee of this Compliance Agreement, the Donee and EPA shall provide written notification to the other party to this Agreement and to the Navy of such event within two (2) business days of discovery of such breach or suspected breach.
- B. The Donee's failure to timely provide such notice shall constitute a breach of this Agreement.
- C. In the event of a breach by the Donee of this Compliance Agreement, EPA may require the Donee to prohibit public access to ex-USS EDSON unless EPA determines that the breach does not present a risk of harm to public health.
- D. In the event of breach by the Donee of any term or condition of this Agreement, EPA shall afford the Donee a reasonable period of time specified in writing ("Cure Period") to correct such breach.
- E. If EPA determines that a breach of this Agreement has not been corrected within the Cure Period, then EPA, in its sole discretion, may:

1. Require the Donee, upon receipt of a request by the Navy, to forfeit to the Navy any and all rights it may have in ex-USS EDSON and title to and possession of ex-USS EDSON shall revert to the Navy, and/or
 2. Provide written notice to the Donee of EPA's determination ("Notice of Determination of Noncompliance") that the Donee has failed to comply with the terms and conditions of this Agreement as described in Paragraph II of this Agreement.
- F. Any such written Notice of Determination of Noncompliance, as described in Paragraph XVIII.E.2 shall:
1. State the reasons for such Determination of Noncompliance, and
 2. Shall specify a time period within which the Donee may respond to such Notice of Determination of Noncompliance.

At the end of such time period, EPA may exercise whatever enforcement authorities it may have in response to any past or future violations of TSCA by the Donee, including any violation described in Paragraph II of this Agreement.

XIX. PARTIES BOUND

The provisions of this Agreement shall apply to and be binding upon the parties to this Agreement and their current and future officers, directors, agents, servants, employees, successors, and assigns in their respective capacities. The undersigned representative(s) of each party to this Agreement certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement, to execute it on behalf of that party, and to legally bind the party on whose behalf he or she executes this Agreement. No change in the Donee's governance, corporate, or partnership status relating to ex-USS EDSON will in any way alter the responsibilities of the Donee under this Agreement.

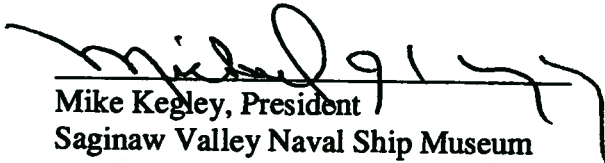
XX. TOLLING OF STATUTE OF LIMITATIONS

The time period during which Paragraph II of this Agreement is in effect shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by EPA based on claims arising from the Donee's continued use of PCBs in regulated concentrations onboard ex-USS EDSON and any transfer of title to or possession of the vessel between the Navy and Donee. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the time period that this Agreement is in effect. The Donee shall not assert, plead, or raise against the United States in any answer, motion, or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time included during the period when this Agreement is in effect in any action based on the aforementioned claims.


XXI. EFFECTIVE DATE

This Agreement shall become effective when this Agreement, the Compliance Agreement between the Navy and the EPA, referenced in Paragraph V, above, and the Donation Contract, containing terms and conditions identical to those in the proposed Donation Contract attached hereto as Exhibit 2 have been fully executed by all of the parties to each of these three agreements. If the proposed Donation Contract is substantively revised before it is executed by the Navy and the Donee, this Agreement shall not become effective.


THE PARTIES SO AGREE:


Mike Kegley, President
Saginaw Valley Naval Ship Museum

12-6-2010
Date


Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

3/4/11
Date


Susan Hedman
Regional Administrator
Region 5
U.S. Environmental Protection Agency

2-18-11
Date